

### **REMARKS**

Applicants' representative would like to thank Examiner Cotroneo for the courtesies extended during interviews conducted on March 8, 2010 and March 19, 2010. During the March 8 interview, Applicants' representative requested that the Examiner further explain why he considers the Declaration filed on November 17, 2009, under 37 CFR § 1.131 as being insufficient. The Examiner explained that the portion of Claim 1 cited at Page 2 of the Office Action mailed February 12, 2010 is not shown in the Declaration filed on November 17, 2009 and suggested that Applicants supplement the Declaration with a figure similar to Figure 16 of the subject patent application. During the March 19 interview, Applicants' representative suggested supplementing the Declaration filed November 17, 2009 to recite how the components shown in Exhibit A function and, further, to allege facts as to how the components functioned when reduced to practice pursuant to 37 CFR § 1.131 and MPEP § 715.07. The Examiner agreed that such a statement of facts is appropriate but noted that a review of the Supplemental Declaration is required prior to agreeing to its sufficiency. The Examiner also noted that a Declaration under 37 CFR § 1.131 must be signed by each inventor. No agreements were reached with respect to patentability. Furthermore, no exhibits were shown or demonstrations conducted.

Claims 47-66 are now pending in the application. The following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

#### **REJECTION UNDER 35 U.S.C. § 102**

Claims 47-66 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Duong et al. (U.S. Publication No. 2005/0049593). These rejections are respectfully traversed.

Applicants submit herewith a Declaration under 35 C.F.R. § 1.131 that establishes conception and reduction to practice of the claimed invention prior to September 3, 2003—the effective filing date of Duong. Therefore, Duong can no longer be considered a valid prior-art reference to the presently pending claims.

Accordingly, reconsideration and withdrawal of the rejection of Claims 47-52 and 54-66 are respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 47-66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagner et al. (U.S. Pub. No. 2001/0014807) in view of Nielson (U.S. Pat. No. 3,515,418). These rejections are respectfully traversed.

Applicants respectfully submit that one of ordinary skill in the art would not be motivated to modify the device of Wagner to include the cam mechanism of Nielson, as suggested by the Examiner, as Wagner teaches away from using such a cam surface to radially expand an annular member.

Wagner discloses a spinal plate system including a plate (10, 100), a ring (18, 118), and a bone screw (20, 120). See Wagner at Paragraph [0036] and Figure 4. Wagner discloses that an inner surface of the ring (18, 118) and an outer surface of a head (32, 125) of the screw (10, 120) are preferably tapered and shaped to *mate with*

*each other.* See Wagner at Paragraph [0039]. In fact, Wagner discloses that the head (32, 125) is preferably screwed into the ring (18, 118), whereby the screw head (32, 125) contains threading (121) on an outer surface thereof that is complimentary to threading (119) disposed on an inner surface of the ring (18, 118). See Wagner at Paragraph [0051] and Figure 9.

Based on the foregoing, Wagner discloses a bone screw (20, 120) that *mates* with a ring (18, 118) and, in fact, notes that such a mating relationship *preferably* is a threaded engagement to increase the hoop stress exerted on the head (32, 125), thereby resulting in a stronger connection between the bone screw (20, 120) and the plate (10, 110). See Wagner at Paragraph [0056]. Wagner further notes that such a threaded engagement between the ring (18, 118) and the bone screw (20, 120) resists back out of the bone screw (20, 120) from the plate (10, 110) if the bone screw (20, 120) becomes loose within a bone. See Wagner at Paragraph [0056].

Because Wagner discloses a ring (18, 118) and a bone screw (20, 120) that are in a mating engagement—preferably a threaded mating engagement—Applicants respectfully submit that modifying the device of Wagner such that the engagement between the ring (18, 118) and the bone screw (20, 120) is not a mating engagement, is contrary to the disclosure of Wagner. Furthermore, given the benefits associated with such a mating engagement between a ring (18, 118) and a bone screw (20, 120) set forth in Paragraph [0056] of Wagner, Applicants respectfully submit that one of ordinary skill in the art would not be motivated to modify the device of Wagner to replace the mating engagement of the ring (18, 118) and the bone screw (20, 120) with a cammed relationship, as disclosed by Nielsen.

In light of the foregoing, Applicants respectfully submit that independent Claims 47, 58, and 65, as well as Claims 48-57, 59-64, and 66, respectively dependent therefrom, are in condition for allowance. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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